Saskatchewan Financial Services Commission
Pensions Division

SUCCESSOR EMPLOYER SITUATIONS

Introduction

The requirements of *The Pension Benefits Act, 1992* with respect to the disposal of a business are covered, for the most part, in section 61 of the Act.

This bulletin has no legal authority. *The Pension Benefits Act, 1992* and *The Pension Benefits Regulations, 1993* should be used to determine specific requirements.

Legislative Requirements

Under section 61 of *The Pension Benefits Act, 1992*, a successor employer situation occurs when a predecessor employer disposes of all or part of its business, undertaking or assets to a successor employer.

There are four possible treatments of the funds accumulated and the benefits accrued under the predecessor employer's plan:

1. Where the successor employer has a pension plan which some or all of the transferring members will be joining, assets and liabilities with respect to those members may be transferred to the successor employer's plan.

2. The successor employer may assume the pension plan of the predecessor employer and keep it going for the members involved, but only if the entire business covered by the plan is taken over by the successor employer.

3. Assets and liabilities may be left in the predecessor employer's plan, with no further accrual of benefits and entitlements arising only when the member terminates membership from the successor employer's pension plan. This would only apply where the predecessor's plan continues to exist for members not involved in the business disposal.

4. A total or partial plan termination may be declared by the Superintendent of Pensions. A termination of a plan would occur when all or a part of a business is sold for those members whose employment is terminated as a result of the sale. It would occur for other plan members affected by the sale, if:

   (a) the successor employer has no pension plan which the members may join,

   (b) the successor employer's plan is voluntary and some members choose not to join, or

   (c) the successor employer has a pension plan which the members must join, but the successor employer does not assume the liability for the predecessor employer's plan, and the predecessor employer wishes to terminate the plan as it relates to the accrued benefits of the affected members.

Subsection 61(3) of the Act requires that continuous service with both employers must be counted for purposes of plan eligibility under the successor employer's plan and for purposes of vesting and locking-in under either employer's plan.

Without the prior written consent of the superintendent, the assets of a pension plan may not be transferred from one plan to another or released on plan termination.

Filing Requirements

1. All Alternatives

The following items must be filed with Pensions Division in all successor employer situations:

(a) a copy of the relevant sections of the sales agreement relating to the pension plan;

(b) an amendment to the successor employer's pension plan, if one exists, to recognize continuous employment with the predecessor employer for purposes of determining eligibility in the successor employer's plan as well as vesting and locking-in; and

(c) a plan termination report with respect to those members whose employment is actually being terminated as a result of the sale or merger or for those transferring members who elect not to join the successor employer's pension plan if that is an option.

2. Predecessor 's Plan Merges With Successor's Plan

The transfer of assets and liabilities from one plan to another requires the filing of documents by both the predecessor and successor employer.

The predecessor employer must file:

(a) an actuarial valuation outlining the basis for valuing benefits and listing each member being transferred and the accrued benefit being transferred on that member's behalf (defined benefit plans only);

(b) a statement as to the interest to be credited on benefits to the date of transfer;

(c) if the predecessor employer's pension plan is continuing for other members, a revised cost certificate for that plan showing the change in costs as a result of the sale (defined benefit plans only);

(d) unless it is specifically covered in the sales agreement, a signed resolution agreeing to the transfer of funds; and

(e) a copy of the information letter or notice given to affected members regarding the transfer.

The successor employer must file:

(a) an amendment to its plan recognizing the transfer of funds and preserving benefits and entitlements accrued under the prior plan for those members whose funds have been transferred;

(b) unless it is specifically covered in the sales agreement, a resolution agreeing to assume the assets and liabilities in respect of the transferred members; and

(c) a revised cost certificate reflecting the change in costs, assets and liabilities resulting from the merger (defined benefit plans only).

3. Successor Assumes Predecessor's Plan

Where the successor employer is assuming the predecessor employer's pension plan, the plan must be amended to recognize the change in corporate ownership. This normally includes a change to the definition of employer, a change in the plan title, and a change to the funding agreement to recognize the new employer name. Also, if the successor employer has other pension plans, a provision must be added to allow movement from one plan of the employer to another without termination of membership.

If it is not specifically covered in the sales agreement, the companies involved must also file a resolution transferring responsibility for the assets and liabilities of the plan from the predecessor employer to the successor.

The Pensions Division should also be provided with the information letter sent to plan members explaining the change in plan sponsorship.

4. Continuation of Predecessor's Plan

Where the successor employer is not assuming the assets and liabilities of the predecessor employer's plan, and a termination of the predecessor employer's plan is not declared, the accrual of benefits under the predecessor employer's plan may cease with respect to the transferring members, but accrued benefits may not be paid out until such time as the transferring members terminate membership in the successor employer's pension plan. Both employers must file certain documents to accommodate such an event.

The predecessor employer must file:

(a) a plan amendment stopping the accrual of benefits for the transferring members with respect to service after the date of the disposal of the business, and recognizing continuous service with the successor employer for purposes of vesting and locking-in;

(b) a revised cost certificate reflecting the change in costs resulting from the change (defined benefit plans only);

(c) a list of the transferring members showing their respective names and accrued benefit as

of the date of suspension; and

(d) a copy of the information letter given to members respecting the treatment of their accrued benefits.

The successor employer must file:

(a) a plan amendment recognizing service with the predecessor employer for purposes of eligibility, vesting and locking-in, and stating that a benefit will be provided from the predecessor plan with respect to service with the predecessor employer; and

(b) a revised cost certificate reflecting the change in costs resulting from the transfer (defined benefit plans only).

In addition, the employers must each file a statement describing the administrative procedures that have been set in place between the two companies to ensure the prompt payment of benefits from both plans when a member terminates membership due to termination of employment, death or retirement.

5. Plan Termination

Where the predecessor employer's plan is terminated in whole or in part, the termination process as described in the bulletin "Termination of a Pension Plan" should be followed.

Special Considerations

Disclosure

Regardless of which option is chosen, it is important that members are made aware of exactly what is happening to their accrued benefits. This may be done through meetings, information letters or other means of communications. As a plan amendment has taken place, the statement required by section 11(2) of the Regulations must be provided. Where a termination is declared, the notice of plan termination required by section 20 of the Regulations and the statement on plan termination required by section 21 of the Regulations must also be provided.

Preservation of Funded Status

When determining the value of benefits to be transferred from one defined benefit plan to another, the actuary normally should use the same basis for valuing benefits as that used in the going concern valuation of the predecessor plan. Where the successor employer's plan is valuing benefits on a going concern basis using less conservative assumptions, and those assumptions have been approved by the jurisdiction in which the successor plan is registered, the actuary may use the successor employer's assumptions for determining the value of benefits to be transferred.

Treatment of Surplus

The surplus provisions of the predecessor employer's pension plan must be considered when there is a full or partial disposal of a business.

If it is contractually clear that ownership of the surplus assets is the predecessor employer's, then, subject to the Act's requirements, the employer may deal with surplus as it sees fit.

Where the surplus provisions in the predecessor employer's pension plan provide that surplus ownership is the beneficiaries', the following steps may be taken:

1. If assets in respect of accrued benefits are not transferred from one plan to another, surplus assets may:

   (a) be allocated to members, or

   (b) where the predecessor plan is continuing for other members, remain in the predecessor plan, and if a surplus allocation or payment is ever sought, the transferred members would have to be considered in any action taken at that time.

2. If the assets in respect of accrued benefits are being transferred from one plan to another, the surplus assets may:

   (a) be allocated directly to the transferring members,

   (b) be transferred to the successor employer's plan and accounted for separately, or

   (c) where the predecessor plan is continuing for other members, remain in the predecessor plan, and if a surplus allocation or payment is ever sought, the transferred members would have to be considered in any action taken at that time.

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